

## **Rule 5. Service and Filing of Pleading and Other Papers**

**(A) Service: When Required.** Unless otherwise provided by these rules or an order of the court, each party and special judge, if any, shall be served with:

- (1) every order required by its terms to be served;
- (2) every pleading subsequent to the original complaint;
- (3) every written motion except one which may be heard ex parte;
- (4) every brief submitted to the trial court;
- (5) every paper relating to discovery required to be served upon a party; and
- (6) every written notice, appearance, demand, offer of judgment, designation of record on appeal, or similar paper. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided by service of summons in Rule 4.

**(B) Service: How made.** Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or party shall be made by delivering or mailing a copy of the papers to him at his last known address.

(1) *Delivery.* Delivery of a copy within this rule means

- (a) offering or tendering it to the attorney or party and stating the nature of the papers being served. Refusal to accept an offered or tendered document is a waiver of any objection to the sufficiency or adequacy of service of that document;
- (b) leaving it at his office with a clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or
- (c) if the office is closed, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or,
- (d) leaving it at some other suitable place, selected by the attorney upon whom service is being made, pursuant to duly promulgated local rule.

(2) *Service by Mail.* If service is made by mail, the papers shall be deposited in the United States mail addressed to the person on whom they are being served, with postage prepaid. Service shall be deemed complete upon mailing. Proof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. It shall be the duty of attorneys when entering their appearance in a cause or when filing pleadings or papers therein, to have noted on the eChronological eCase sSummary or said pleadings or papers so filed the address and telephone number of their office. Service by delivery or by mail at such address shall be deemed sufficient and complete.

**(C) Certificate of Service.** An attorney or unrepresented party tendering a document to the Clerk for filing shall certify that service has been made, list the parties served, and specify the date and means of service. The certificate of service shall be placed at the end of the document and shall not be separately filed. The separate filing of a certificate of service, however, shall not be grounds for rejecting a document for filing. The Clerk may permit documents to be filed without a certificate of service but shall require prompt filing of a separate certificate of service.

**(D) Same: Numerous defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order

- (1) that service of the pleadings of the defendants and replies thereto need not be made as between the defendants;
- (2) that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties; and
- (3) that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

**(E) Filing.**

- (1) Except as otherwise provided in subparagraph (2) hereof, all pleadings and papers subsequent to the complaint which are required to be served upon a party shall be filed with the Court either before service or within a reasonable period of time thereafter.
- (2) No deposition or request for discovery or response thereto under Trial Rules 27, 30, 31, 33, 34 or 36 shall be filed with the Court unless:
  - (a) A motion is filed pursuant to Trial Rule 26(C) or Trial Rule 37 and the original deposition or request for discovery or response thereto is necessary to enable the Court to rule; or
  - (b) A party desires to use the deposition or request for discovery or response thereto for evidentiary purposes at trial or in connection with a motion, and the Court, either upon its own motion or that of any party, or as a part of any pre-trial order, orders the filing of the original.
- (3) Custody of original and Period of Retention:
  - (a) The original of a deposition shall, subject to the provisions of Trial Rule 30(E), be delivered by the reporter to the party taking it and shall be maintained by that party until filed with the Court pursuant to paragraph (2) or until the later of final judgment, agreed settlement of the litigation or all appellate rights have been exhausted.
  - (b) The original or any request for discovery or response thereto under Trial Rules 27, 30, 31, 33, 34 and 36 shall be maintained by the party originating the request or response until filed with the Court pursuant to paragraph (2) or until the later of final judgment, agreed settlement or all appellate rights have been exhausted.
- (4) In the event it is made to appear to the satisfaction of the Court that the original of a deposition or request for discovery or response thereto cannot be filed with the Court when required, the Court may allow use of a copy instead of the original.
- (5) The filing of any deposition shall constitute publication.

**(F) Filing With the Court Defined.** The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

- (1) Delivery to the clerk of the court;
- (2) Sending by electronic transmission under the procedure adopted pursuant to Administrative Rule 12;
- (3) Mailing to the clerk by registered, certified or express mail return receipt requested;

- (4) Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed; or
  - (5) If the court so permits, filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit.
- Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.

**(G) Filing of Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative rule 9(G)(1).** Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

- (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked “Not for Public Access” or “Confidential.”
- (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked “Not For Public Access” or “Confidential” and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.
- (3) With respect to documents filed in electronic format, the trial court, by local rule, may provide for compliance with this rule in a manner that separates and protects access to information excluded from public access.
- (4) This rule does not apply to a record sealed by the court pursuant to IC 5-14-3-5.5 or otherwise, nor to records, documents, or information filed in cases to which public access is prohibited pursuant to Administrative Rule 9(G).

**Rule 39. Trial by jury or by the court**

**(A) By jury.** When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the ~~e~~Chronological ~~e~~Case ~~s~~Summary as a jury action. Issues upon which a jury trial is so demanded shall be tried by jury, subject to the following exceptions:

- (1) If the parties or their attorneys of record, by written stipulation filed with the court or by oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury upon any or all issues triable by jury as of right and so demanded, the court shall try those issues without a jury. The stipulation shall be effective only if filed or made in court before evidence is admitted at the trial or at such later time as the court, in its discretion, may allow.

(2) If a party demands a jury trial on any issue upon which he is entitled to jury trial as of right in the case, the court shall grant it on that issue.

**(B) By the court - Advisory jury - Trial by consent.** In any case where there are issues upon which a jury trial has not been demanded or has not properly been demanded or upon which there is no right to trial by jury as of right, the court may submit any or all of such issues to a jury for trial. The verdict shall be advisory unless, before the jury retires, the court, with the consent of both parties or their attorneys, orders that the verdict shall have the same effect as if a trial by jury had been a matter of right. Such order shall be granted at the court's discretion, and all issues shall be tried as if subject to jury trial as a matter of right unless the parties' consent is limited to fewer issues, or unless the court limits its order to fewer of those issues upon which consent has been given.

**(C) Rulings of the court - Objections.** In proceeding under Rules 38 and 39, error may be predicated upon the court's ruling or action without motion or other objection by a party.

**(D) Findings in case of advisory jury.** Findings of fact shall not be required upon issues to the extent that the judge's decision follows the verdict of a properly selected advisory jury.

#### **Rule 53.1. Failure to rule on motion**

**(A) Time limitation for ruling.** In the event a court fails for thirty (30) days to set a motion for hearing or fails to rule on a motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is required, upon application by an interested party, the submission of the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.

**(B) Exceptions.** The time limitation for ruling on a motion established under Section (A) of this rule shall exclude any period after which the case is referred to alternative dispute resolution and until a report on the alternative dispute resolution is submitted to the court. The time limitation for ruling on a motion established under Section (A) of this rule shall not apply where:

- (1) The Court, within thirty (30) days after filing, orders that a motion be considered during the trial on the merits of the cause; or
- (2) The parties who have appeared or their counsel stipulate or agree on record that the time limitation for ruling on a motion shall not apply; or
- (3) The time limitation for ruling has been extended by the Supreme Court as provided by Section (D) of this rule; or
- (4) The ruling in question involves a repetitive motion, a motion to reconsider, a motion to correct error, a petition for post-conviction relief, or a ministerial postjudgment act.

**(C) Time of ruling.** For the purposes of Trial Rules 53.1, and 53.2 ~~and 53.3~~, a court will be deemed to have ruled or decided at the time the ruling or decision is entered in the Chronological Case Summary ~~into a public record of the court or at the time the ruling or decision is received in the office of the Clerk of the court for filing.~~

**(D) Extension of time for ruling.** A judge may apply to the Supreme Court of Indiana to extend the time limitation set forth under Trial Rule 53.1, 53.2, or 53.3. The application must be filed prior to the filing of a praecipe with the Clerk under Trial Rules 53.1, 53.2, or 53.3, must be verified, must be served on the Clerk and all parties of record, and must set forth the following information:

- (1) The nature of the matter under submission;
- (2) The circumstances warranting the delay; and
- (3) The additional time requested.

The withdrawal of submission under Trial Rule 53.1 or 53.2 or denial of a motion to correct error under Trial Rule 53.3 may not take effect during the pendency of the application for an extension of time to rule. However, if the time limitation expires while the application is pending before the Supreme Court, the jurisdiction of the trial judge shall be suspended at that point pending the action of the Supreme Court.

**(E) Procedure for withdrawing submission.** Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing in the Clerk's praecipe book, record the filing in the eChronological eCase sSummary under the cause, and determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

- (1) If the Clerk determines that the ruling or decision has not been delayed, the Clerk shall notify in writing all parties of record in the proceeding and record this determination in the eChronological eCase sSummary under the cause.
- (2) If the Clerk determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2, the Clerk shall give written notice to the judge of the cause and the Supreme Court of Indiana that submission of the cause has been withdrawn effective as of the time of the filing of the praecipe and record this determination in the eChronological eCase sSummary under the cause.

**(F) Report to Supreme Court.** When a special judge is appointed under Trial Rule 53.1 or 53.2, the judge from whom submission was withdrawn shall, within ten (10) days from receipt of the order appointing a special judge, file a written report in the Supreme Court under the cause appointing the special judge. This report shall fully state the nature of the matters held in excess of the time limitations. Additionally, the report may relate any other facts or circumstances which the judge deems pertinent.

**(G) Permanent record.** The Supreme Court shall maintain a permanent record of special judge appointments under Trial Rules 53.1 and 53.2.

### **Rule 53.3. Motion to correct error: time limitation for ruling**

**(A) Time limitation for ruling on motion to correct error.** In the event a court fails for forty-five (45) days to set a Motion to Correct Error for hearing, or fails to rule on a Motion to Correct Error within thirty (30) days after it was heard or forty-five (45) days

after it was filed, if no hearing is required, the pending Motion to Correct Error shall be deemed denied. Any appeal shall be initiated by filing the ~~a~~Notice of ~~a~~Appellate Rule 9(A) within thirty (30) days after the Motion to Correct Error is deemed denied.

**(B) Exceptions.** The time limitation for ruling on a motion to correct error established under Section (A) of this rule shall not apply where:

- (1) The party has failed to serve the judge personally; or
- (2) The parties who have appeared or their counsel stipulate or agree on record that the time limitation for ruling set forth under Section (A) shall not apply; or
- (3) The time limitation for ruling has been extended by Section (D) of this rule.

**(C) Time of setting and ruling.** ~~The time at which a court is deemed to have ruled shall be as set forth in Trial Rule 53.1(C).~~ **For purposes of applying the “deemed denied” provision of Section (A) of this rule, the court is considered to set a hearing on a Motion to Correct Errors on the date the setting is entered in the Chronological Case Summary; and the court is considered to rule on a Motion to Correct Errors on the date the ruling is entered in the Chronological Case Summary.**

**(D) Extension of time for ruling.** The Judge before whom a Motion to Correct Error is pending may extend the time limitation for ruling for a period of no more than thirty (30) days by ~~filing~~ **making** an entry in the Chronological Case Summary advising all parties of the extension. Such entry must be in writing, must be filed before the expiration of the initial time period for ruling set forth under Section (A), and must be served on all parties. Additional extensions of time may be granted only upon application to the Supreme Court as set forth in Trial Rule 53.1(D).

## **Rule 58. Entry and content of judgment**

**(A) Entry of judgment.** Subject to the provisions of Rule 54(B), upon a verdict of a jury, or upon a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the Record of Judgments and Orders, ~~and note the entry of the judgment in the Chronological Case Summary,~~ and **the** Judgment Docket. A judgment shall be set forth on a separate document, except that a judgment may appear upon the same document upon which appears the court's findings, conclusions, or opinion upon the issues. The entry of the judgment shall not be delayed for the taxing of costs. Attorneys may submit suggested forms of judgment to the court, and upon request of the court, shall assist the court in the preparation of a judgment, but the judgment shall not be delayed to await the resolution of issues by agreement of counsel. The judge failing promptly to cause the judgment to be prepared, signed and entered as provided herein may be compelled to do so by mandate.

**(B) Content of judgment.** Except in small claims cases, a judgment shall contain the following elements:

- (1) A statement of the submission indicating whether the submission was to a jury or to the Court; whether the submission was upon default, motion, cross-claim,

counterclaim or third-party complaint; and if the submission was to less than all issues or parties, such other matters as may be necessary to clearly state what issue is resolved or what party is bound by the judgment.

- (2) A statement of the appearances at the submission indicating whether the parties appeared in person, by counsel, or both; whether there was a failure to appear after notice; and whether the submission was conducted by telephone conference.
- (3) At the court's discretion and in such detail as it may deem appropriate, a statement of the court's jurisdiction over the parties and action and of the issues considered in sufficient particularity to enable any party affected by the judgment to raise in another action the defenses of merger, bar or claim or issue preclusion.
- (4) A statement in imperative form which clearly and concisely sets forth the relief granted, any alteration of status, any right declared, or any act to be done or not done.
- (5) The date of the judgment and the signature of the judge.

**(C) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1).** Every court that issues a judgment or order containing documents or information excluded from public access pursuant to Administrative Rule 9(G)(1) shall comply with the provisions of Trial Rule 5(G).

#### **Rule 59. Motion to correct error**

**(A) Motion to correct error - When mandatory.** A Motion to Correct Error is not a prerequisite for appeal, except when a party seeks to address:

- (1) Newly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days of final judgment which, with reasonable diligence, could not have been discovered and produced at trial; or
- (2) A claim that a jury verdict is excessive or inadequate. All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

**(B) Filing of motion.** The motion to correct error, if any, may be made by the trial court, or by any party.

**(C) Time for filing: Service on judge.** The motion to correct error, if any, shall be filed not later than thirty (30) days after the entry of a final judgment ~~or an appealable final order~~ **in the Chronological Case Summary**. A copy of the motion to correct error shall be served, when filed, upon the judge before whom the case is pending pursuant to Trial Rule 5. The time at which the court is deemed to have ruled on the motion is set forth in T.R. 53.3.

**(D) Errors raised by motion to correct error, and content of motion.** Where used, a motion to correct error need only address those errors found in Trial Rule 59(A)(1) and (2). Any error raised however shall be stated in specific rather than general terms and shall be accompanied by a statement of facts and grounds upon which the error is based. The error claimed is not required to be stated under, or in the language of the bases for the motion allowed by this rule, by statute, or by other law.

**(E) Statement in opposition to motion to correct error.** Following the filing of a motion to correct error, a party who opposes the motion may file a statement in opposition to the motion to correct error not later than fifteen [15] days after service of the motion. The statement in opposition may assert grounds which show that the final judgment or appealable final order should remain unchanged, or the statement in opposition may present other grounds which show that the party filing the statement in opposition is entitled to other relief

**(F) Motion to correct error granted.** Any modification or setting aside of a final judgment or an appealable final order following the filing of a Motion to Correct Error shall be an appealable final judgment or order.

**(G) Cross errors.** If a motion to correct error is denied, the party who prevailed on that motion may, in the appellate brief and without having filed a statement in opposition to the motion to correct error in the trial court, defend against the motion to correct error on any ground and may first assert grounds for relief therein, including grounds falling within sections (A)(1) and (2) of this rule. In addition, if a ~~praecept~~ **Notice of Appeal** rather than a motion to correct error is filed by a party in the trial court, the opposing party may raise any grounds as cross-errors and also may raise any reasons to affirm the judgment directly in the appellate brief, including those grounds for which a motion to correct error is required when directly appealing a judgment under Sections (A)(1) and (2) of this rule.

**(H) Motion to correct error based on evidence outside the record.**

- (1) When a motion to correct error is based upon evidence outside the record, the motion shall be supported by affidavits showing the truth of the grounds set out in the motion and the affidavits shall be served with the motion.
- (2) If a party opposes a motion to correct error made under this subdivision, that party has fifteen [15] days after service of the moving party's affidavits and motion, in which to file opposing affidavits.
- (3) If a party opposes a motion to correct error made under this subdivision, that party has fifteen [15] days after service of the moving party's affidavits and motion, in which to file its own motion to correct errors under this subdivision, and in which to assert relevant matters which relate to the kind of relief sought by the party first moving to correct error under this subdivision.
- (4) No reply affidavits, motions, or other papers from the party first moving to correct errors are contemplated under this subdivision.

**(I) Costs in the event a new trial is ordered.** The trial court, in granting a new trial, may place costs upon the party who applied for the new trial, or a portion of the costs, or it may place costs abiding the event of the suit, or it may place all costs or a portion of the costs on either or all parties as justice and equity in the case may require after the trial court has taken into consideration the causes which made the new trial necessary.

**(J) Relief granted on motion to correct error.** The court, if it determines that prejudicial or harmful error has been committed, shall take such action as will cure the



error, including without limitation the following with respect to all or some of the parties and all or some of the errors:

- (1) Grant a new trial;
- (2) Enter final judgment;
- (3) Alter, amend, modify or correct judgment;
- (4) Amend or correct the findings or judgment as provided in Rule 52(B);
- (5) In the case of excessive or inadequate damages, enter final judgment on the evidence for the amount of the proper damages, grant a new trial, or grant a new trial subject to additur or remittitur;
- (6) Grant any other appropriate relief, or make relief subject to condition; or
- (7) In reviewing the evidence, the court shall grant a new trial if it determines that the verdict of a non-advisory jury is against the weight of the evidence; and shall enter judgment, subject to the provisions herein, if the court determines that the verdict of a non-advisory jury is clearly erroneous as contrary to or not supported by the evidence, or if the court determines that the findings and judgment upon issues tried without a jury or with an advisory jury are against the weight of the evidence. In its order correcting error the court shall direct final judgment to be entered or shall correct the error without a new trial unless such relief is shown to be impracticable or unfair to any of the parties or is otherwise improper; and if a new trial is required it shall be limited only to those parties and issues affected by the error unless such relief is shown to be impracticable or unfair. If corrective relief is granted, the court shall specify the general reasons therefor. When a new trial is granted because the verdict, findings or judgment do not accord with the evidence, the court shall make special findings of fact upon each material issue or element of the claim or defense upon which a new trial is granted. Such finding shall indicate whether the decision is against the weight of the evidence or whether it is clearly erroneous as contrary to or not supported by the evidence; if the decision is found to be against the weight of the evidence, the findings shall relate the supporting and opposing evidence to each issue upon which a new trial is granted; if the decision is found to be clearly erroneous as contrary to or not supported by the evidence, the findings shall show why judgment was not entered upon the evidence.

#### **Rule 60. Relief from judgment or order**

**(A) Clerical mistakes. Of its own initiative or on the motion of any party and after such notice, if any, as the court orders,** ~~C~~lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the **Notice of Completion of Clerk's Record is filed under Appellate Rule 8** ~~record is filed on appeal of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the court on appeal, and thereafter while the appeal is pending may be so corrected with leave of the court on appeal.~~ **After filing of the Notice of Completion of Clerk's Record and during an appeal, such mistakes may be so corrected with leave of the court on appeal.**

**(B) Mistake - Excusable neglect - Newly discovered evidence - Fraud, etc.** On motion and upon such terms as are just the court may relieve a party or his legal representative from ~~an entry of default, final order, or final~~ a judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
  - (a) at the time of the action he was an infant or incompetent person, and
  - (b) he was not in fact represented by a guardian or other representative, and
  - (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
  - (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
  - (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
  - (f) the motion alleges a valid defense or claim;
- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4). The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding or for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**(C) Appeal - Change of venue.** A ruling or order of the court denying or granting relief, in whole or in part, by motion under subdivision (B) of this rule shall, upon entry in the

**Chronological Case Summary**, be deemed a final judgment, and an appeal may be taken therefrom as in the case of a judgment. No change of venue in such cases shall be taken from the judge or county except for cause shown by affidavit.

**(D) Hearing and relief granted.** In passing upon a motion allowed by subdivision (B) of this rule the court shall hear any pertinent evidence, allow new parties to be served with summons, allow discovery, grant relief as provided under Rule 59 or otherwise as permitted by subdivision (B) of this rule.

**(E) Infants, incompetents, and governmental organizations.** Except as otherwise provided herein, this rule shall apply to infants, incompetents, and governmental organizations. The time for seeking relief against a judgment, order or proceeding allowed or recognized under subdivision (B) of this rule or any other statute shall not be tolled or extended as to such persons.

**Rule 62. Stay of proceedings to enforce a judgment**

**(A) Execution.** Execution may issue upon entry of a judgment **in the Chronological Case Summary** except as otherwise provided in this rule hereinafter. During the pendency of an appeal the provisions of subdivision (C) of this rule govern the suspending, modifying, restoring, or granting of an injunction, the appointment of a receiver or, to the extent that a stay is not otherwise permitted by law upon appeal, any judgment or order for specific relief other than the payment of money.

**(B) Stay of execution.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the filing and disposition of

- (1) a motion to correct error or to alter or amend a judgment made pursuant to Rule 59,
- (2) a motion for judgment in accordance with a motion for a judgment on the evidence made pursuant to Rule 50,
- (3) a motion for amendment to the findings or for additional findings or for a new trial or judgment made pursuant to Rule 52,
- (4) a motion for relief from a judgment or order made pursuant to Rule 60, or
- (5) an appeal.

**(C) Stay of orders relating to injunctions, appointment of receivers and orders for specific relief.** When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the appointment of a receiver or, to the extent that a stay is not otherwise permitted by law upon appeal, from any judgment or order for specific relief other than the payment of money, the court to which the application is made in its sound discretion may suspend, modify, restore, or grant the injunction, the appointment of the receiver or the specific relief during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. Nothing in this rule is intended to affect the original jurisdiction of the Supreme Court or Court of Appeals of Indiana.

**(D) Stay upon appeal.**

- (1) Procedure for obtaining. No appeal bond shall be necessary to perfect an appeal from any judgment or appealable interlocutory order. Enforcement of a judgment or appealable interlocutory order will be suspended during an appeal upon the giving of an adequate appeal bond with approved sureties. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the appropriate court. The trial court or judge thereof shall have jurisdiction to fix and approve the bond and order a stay pending an appeal as well as prior to the appeal. If the stay is denied by the trial court or the judge thereof the appellate tribunal may reconsider the application at any time after denial; and this provision also shall apply to stays or relief allowed under subdivision (C) of this rule. When the stay or relief is granted by the court on appeal, the clerk of the Supreme Court shall issue a certificate thereof to the clerk of the court below who shall file it with the judgment or order below and deliver it to the sheriff or any officer to whom execution or an enforcement order has been issued.
- (2) Form of appeal bond. Whenever an appellant entitled thereto desires a stay on appeal, he may present to the appropriate court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real action, replevin, and actions to foreclose liens or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.
- (3) Effect of appeal bond. Nothing in this subdivision shall be construed as giving the right to stay, by giving such bond, any judgment or order which cannot now be stayed or suspended by the giving of an appeal bond, except as provided in subdivisions (A), (B) and (C) of this rule. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

**(E) Stay in favor of governmental organization - Personal representative.** When an appeal or review is taken by a governmental organization, or by a court-appointed representative of a decedent's estate, guardian, receiver, assignee for the benefit of creditors, trustee or other court-appointed representative, the operation or enforcement of

the judgment shall be stayed as it would as against other persons upon application to the appropriate court, but no bond, obligation or other security shall be required.

**(F) Stay of execution under existing laws - Other bonds required before or as a condition to judgment: Money in lieu of bonds - Amount fixed by court.** Execution upon a judgment for recovery of money or sale of property may be stayed, and personal property taken in execution may be delivered up as now provided by law. Indiana Acts, ch. 38 §§ 493-506 and §§ 531-536 (Spec.Sess. 1881) IC 34-1-35-1 to 34-1-35-14 and IC34-1-31 to 34-1-38-6. Nothing in this rule is intended to alter the right of a party to the protection of a surety bond or security or to obtain relief by furnishing a surety bond or security before or as a condition of final judgment, including without limitation such protection or relief in replevin, ejectment, attachment and injunction actions, upon judicial review of administrative action, in suits upon a lost instrument, for costs and the like. In any case where a surety bond or security is furnished under this rule, the right to furnish money or a check in lieu of a bond shall remain unimpaired. Any requirement that the amount of the bond be fixed and reconsidered by the court in civil actions and proceedings shall remain unaffected by this rule.

**(G) Effect of stay or temporary relief when new trial granted.**

When an appealable judgment or order is entered against a party who has obtained a prior stay or temporary relief by furnishing a surety bond or other security, including without limitation relief in replevin, ejectment, attachment and injunctive actions, such stay or temporary relief shall lapse except to the extent:

- (1) provided in subdivision (A) of this rule; or
- (2) a stay is granted as provided or recognized in this rule.

If thereafter the order or judgment is reversed and a new trial or new hearing in fact is ordered or authorized in favor of such party, the original stay or relief shall not be reinstated unless the reversing court orders otherwise or, in the absence of such order, the court on the new trial or new hearing orders otherwise. When a stay or temporary relief is granted to a party seeking reversal of an appealable order or judgment under subdivision (B), (C) or (D) of this rule and a new trial or new hearing in fact is ordered or authorized in favor of such party, the stay or temporary relief shall continue until a final, appealable judgment or order is entered unless the court on review or appeal orders otherwise or, in the absence of such order, the court on the new trial or new hearing orders otherwise. Nothing in this subdivision is intended to limit the liability of the bondsman or other security or determine the order of liability assumed among different bondsmen or different security furnished in the course of proceedings before judgment, after judgment and after appeal or review.

**(H) Stay of judgment as to multiple claims or multiple parties.**

When a court has ordered a final judgment under the conditions stated in Rule 54(B), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

**Rule 72. Trial Court and Clerks**

**(A) Trial courts always open.** The trial courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process and of making and directing all interlocutory motions, orders, and rules. Terms of court shall not be recognized.

**(B) Trials and hearings - Orders in chambers.** All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom in or outside the county seat. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the circuit; but, no hearing other than one ex parte, shall be conducted outside the state without the consent of all parties affected thereby.

**(C) Clerk's office and orders by clerk.** The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the circuit court judge may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing process, including final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

**(D) Notice of Orders or Judgments.** Immediately upon the entry in the Chronological Case Summary of a ruling upon a motion, an order or judgment, the clerk shall serve a copy of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear and shall make a record of such mailing. Such mailing is sufficient notice for all purposes for which notice of the entry is required by these rules; but any party may, in addition, serve a notice of such entry in the manner provided in Rule 5 for the service of papers. In cases of consolidated proceedings involving ten (10) or more parties, the trial judge may provide by order for alternative method of notice to designated liaison parties who undertake responsibility for forwarding notice to all parties. It shall be the duty of the attorneys when entering their appearance in a case or when filing pleadings or papers therein, to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.

**(E) Effect of Lack of Notice.** Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the Court to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling,

order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by Court personnel. Such extension shall commence when the party first obtained actual knowledge and not exceed the original time limitation.

#### **Rule 77. Court records**

**(A) Required records.** The clerk of the circuit court shall maintain the records for all circuit, superior, county, probate and municipal courts in the county.

(1) The clerk of the circuit court shall maintain any record required by an act of the general assembly or a duly promulgated rule of any state agency, including the following:

- (a) Lis pendens record (IC 32-30-11-1);
- (b) Record of transcripts and foreign judgments (IC 33-32-3-2(d));
- (c) Judgment Docket (IC 33-32-3-2), wherein all orders requiring entry in the judgment docket shall include the term "judgment" in the title and shall set forth the specific dollar amount of the judgment in the body of the order;
- (d) Execution docket (IC 33-32-3-5);
- (e) Records specified under the probate code; and
- (f) Records specified by the state board of accounts as to the fiscal matters relating to the court and clerk.

(2) The clerk of the circuit court shall also maintain the following records as specified under this rule:

- (a) Chronological eCase sSummary;
- (b) Case file;
- (c) Record of judgments and orders (order book); and
- (d) Indexes.

**(B) Chronological eCase sSummary.** For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). Notation of judicial events shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. **All rulings and decisions of the court shall have the time of their receipt by the clerk noted in the Chronological Case Summary entry made by the clerk.** The eChronological eCase sSummary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the entry of judgments in the judgment docket (IC 33-32-3-2), and file status (pending/decided) under section (G) of this rule. **The Chronological Case Summary may be kept in a paper format, or microfilm, or electronically.** The eChronological eCase sSummary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

**(C) Case file.** In each case assigned a case number, the clerk of the circuit court shall maintain a file containing a copy of any order, entry, or judgment in the case and the original of all other documents relating to the case: including pleadings, motions, service

of process, return of service, verdicts, executions, returns on executions and, if prepared, certified, and approved, the transcript of the testimony. The original order, entry, or judgment shall be maintained as part of the record of judgments and orders, the file shall contain a copy of such original. Unless necessary to detail the filing chronology, the case file need not include transmittal letters, instructions, envelopes or other extrinsic materials not related to the issues of the case. The file shall contain an index tab listing the case number and an abbreviated designation of the parties and shall note the information required under section (G) of this rule. In the event the court does not maintain a separate evidence file, documents entered into evidence, including depositions, shall be placed into the case file.

**(D) Record of judgments and orders (order book).** The clerk of the circuit court shall maintain a daily, verbatim, compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under Trial Rule 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. The record of judgments and orders may be kept in a paper format, on microfilm, or electronically. The clerk may maintain a separate record of judgments and orders as required for the functional management of the court's business. Except where the record of judgments and orders is maintained electronically, a separate record of judgments and orders for confidential materials shall be maintained.

**(E) Indexes.** In addition to any index required under the provisions of this rule, state statute, or duly promulgated rule of a state agency, the clerk of the circuit court shall prepare and maintain indexes of all actions and proceedings in the circuit, superior, county, probate, and municipal courts in the County. This index shall be in an alphabetical format which notes the names of all parties, the date on which a party became part of the proceeding, and the case number of the proceeding. In the event courts are not located in the county courthouse, the clerk shall supervise the appropriate preparation of indexes for these courts and provide for the combination of indexes for all courts in the county.

**(F) Pleadings and papers: Where filed and entered .** All pleadings and papers shall be filed in accordance with Trial Rule 5 with the clerk of the circuit court. In the event a court is not located in the same facility as the clerk of the circuit court, all pleadings and papers shall be filed with the clerk serving that court. If an initial pleading or complaint is assigned to a court not within the facility where the initial pleading or complaint was filed, the clerk shall promptly notify the person filing the pleading and transmit the documents to the clerk serving the court where the matter will be considered and all further papers will be filed with the latter court. In the event an initial pleading or complaint is filed with the clerk of the wrong court, the clerk, upon notice to the person filing the initial pleading or complaint, may transfer the case to the proper court before service of summons or appearance of other parties, or any opposing party may move for transfer as provided for under Trial Rule 12(B) or Trial Rule 75.



**(G) Case File Status.**

- (1) The clerk of the circuit court shall maintain the case files, as set forth under section (C) of this rule, in either a pending or decided status. Pending files, arranged by assigned case number, consist of all cases which have not been decided. Decided files consist of the actions which have been concluded and no further proceedings remain to be conducted as evidenced by the final judgment or other order of the court.
- (2) When a case has been decided, the file shall be assigned a disposition date pursuant to Administrative Rule 7 of the Indiana Supreme Court and maintained under the original case number in a location apart from pending files. In the event a decided case is redocketed for consideration by the court, the disposition date shall be deleted from the file and the case file returned to the pending cases in sequence with the case number originally assigned. A disposition date shall be reassigned at the time the case returns to a decided status.

**(H) Statistics.** The clerk of the circuit court shall establish procedures to determine a statistical count of all actions filed, decided, and reinstated as required by the division of state court administration.

**(I) Replacing lost papers.** If an original pleading or paper filed with the clerk of the circuit court cannot be located within the record keeping system set forth under this rule, the court may authorize a copy of such record to be filed and used as the original.

**(J) Method of record keeping.** Under the direction of the Supreme Court of Indiana, the clerk of the circuit court may, notwithstanding the foregoing sections, keep records in any suitable media. The record keeping formats and systems and the quality and permanency requirements employed for the eChronological eCase sSummary, the case file, and the record of judgments and orders (order book) shall be approved by the division of state court administration for compliance with the provisions of this rule.

**(K) Electronic Posting of Court Records.** The clerk, with the consent of the majority of the judges in the courts of record, may make court records, including but not limited to the eChronological eCase sSummary, record of judgments and orders, index, and case file available to the public through remote electronic access such as the Internet or other electronic method. The records to be posted, the specific information that is to be included, its format, pricing structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Division of State Court Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to the applicable laws regarding confidentiality.

**Rule 79. Special judge selection: circuit, superior, probate, municipal, and county courts**

**(A) Application.** When the appointment of a special judge is required under Trial Rule 76, the provisions of this rule constitute the exclusive manner for the selection of special judges in circuit, superior, probate, municipal, and county courts in all civil and juvenile

proceedings. Trial Rule 79.1 constitutes the exclusive manner for the selection of special judges in all actions in city, town, and the Marion county small claims courts.

**(B) Duty to notify court.** It shall be the duty of the parties to promptly advise the court of an application or motion for change of judge.

**(C) Disqualification or recusal of judge.** A judge shall disqualify and recuse whenever the judge, the judge's spouse, a person within the third degree of relationship to either of them, the spouse of such a person, or a person residing in the judge's household:

- (1) is a party to the proceeding, or an officer, director or trustee of a party;
  - (2) is acting as a lawyer in the proceeding;
  - (3) is known by the judge to have an interest that could be substantially affected by the proceeding; or
  - (4) is otherwise associated with the pending litigation in such fashion as to require disqualification in accordance with Canon 3(E) of the *Code of Judicial Conduct* .
- Upon disqualification or recusal under this section, a special judge shall be selected in accordance with Sections (D), (E), and (H) of this rule.

**(D) Agreement of the parties.** Within seven (7) days of the order granting a change of judge or an order of disqualification, the parties may agree to an eligible special judge. The agreement of the parties shall be in writing and shall be filed in the court where the case is pending. Alternatively, the parties may agree in writing to the selection of an eligible special judge in accordance with Section (H). Upon the filing of the agreement, the court shall enter an order appointing such individual as the special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties or appoint a special judge under Section (H). A judge appointed under this section shall have fifteen (15) days to decide whether to accept the case in accordance with Section (G). This provision shall not apply to criminal proceedings or election contests involving the nomination or election of the judge of the court in which the contest is filed.

**(E) Selection by court.** In the event the parties fail to agree or are not permitted to agree to the appointment of a special judge under Section (D) of this rule, they may consent to the appointment of a special judge by the judge before whom the case is pending. A party in an *ex parte* proceeding may also agree to the appointment of a special judge under this provision. If the judge before whom the case is pending is unavailable, the parties may agree to the appointment of a special judge by the regular judge of the court. Upon being advised that the parties agree to the selection of a special judge by the court, the court shall enter an order appointing an eligible special judge in the case and provide notice pursuant to Trial Rule 72(D) to the special judge and all parties. A judge appointed under this Section shall have fifteen (15) days to decide whether to accept the case and enter his or her acceptance in accordance with Section (G).

**(F) Selection by Panel.** In the event a special judge is not selected under Sections (D) or (E) of this rule, this section shall be used for the selection of a special judge.

- (1) *Naming of Panel.* Within two (2) days of deciding that a special judge must be appointed under this section, the judge before whom the case is pending shall submit

a panel of three persons eligible under Section J to the parties for striking. In the event the judge before whom the case is pending is unavailable to submit the panel, the regular judge of the court where the case is pending shall submit the panel to the parties.

- (2) *Striking From Panel.* In an adversary proceeding, each party shall be entitled to strike one judge from the panel. In an ex parte proceeding, the sole party shall be entitled to strike one judge from the panel. The moving party shall be entitled to strike first, and shall have seven (7) days from the day the clerk mails the panel to the parties to strike. The nonmoving party, or the Clerk of the Court in an *ex parte* proceeding, shall have seven (7) days from the date of the first strike to make the final strike.
- (3) *Failure of Nonmoving Party or Clerk to Strike.* If the moving party, or the Clerk of the Court in an *ex parte* proceeding, fails to strike within the time required by subsection (2), the moving party shall have seven (7) days from that time to make the final strike.
- (4) *Failure of Moving Party to Strike.* If the moving party fails to strike under either subsection (2) or (3) within the time limits required by those subsections, the judge who submitted the panel shall resume jurisdiction of the case.
- (5) *Appointment of Special Judge.* The judge who submitted the panel shall appoint the judge remaining on the panel as special judge in the case.

**(G) Acceptance of appointment.** A special judge selected under Sections (D), (E), or (F) of this rule shall have fifteen (15) days from the date of appointment to decide whether or not to accept the case and enter his or her decision. The filing of the acceptance vests jurisdiction in the special judge. An oath or additional evidence of acceptance of jurisdiction is not required.

**(H) Selection under local rule.** In the event a special judge does not accept the case under Sections (D), (E) or (F), or a judge disqualifies and recuses under Section (C), the appointment of an eligible special judge shall be made pursuant to a local rule approved by the Indiana Supreme Court which provides for the following:

- (1) appointment of persons eligible under Section J within the administrative district as set forth in Administrative Rule 3(A) to serve as a special judge in the court where the case is pending;
- (2) the effective use of all judicial resources within an administrative district; and
- (3) certification to the Supreme Court of Indiana of cases in which no judge is eligible to serve as special judge or the particular circumstance of a case warrants selection of a special judge by the Indiana Supreme Court. A person appointed to serve as special judge under a local rule must accept jurisdiction in the case unless the appointed special judge is disqualified pursuant to the *Code of Judicial Conduct*, ineligible for service under this rule, or excused from service by the Indiana Supreme Court. The order of appointment under the local rule shall constitute acceptance. An oath or additional evidence of acceptance of jurisdiction is not required.

**(I) Discontinuation of service as special judge.** In the event a special judge assumes jurisdiction and thereafter ceases to act for any reason except the granting of a timely motion for change of judge, the regular judge of the court where the case is pending shall

assume jurisdiction, provided such judge has not previously served in the case and is otherwise eligible to serve. If the regular judge does not assume jurisdiction under this section, the successor special judge shall be selected in accordance with Sections (D) and (H) of this rule. If the special judge ceases to act by reason of the timely granting of a motion for change of judge, the special judge shall appoint a successor special judge in accordance with Sections (D), (E), (F), and (H) of this rule.

**(J) Eligibility.** Any regular judge of a Circuit, Superior, Probate, Municipal, or County Court, a senior judge, or a person serving as magistrate in a court of record, including a person who has been a member of a panel for selection, is eligible for appointment by a trial court as a special judge unless this judicial official:

- (1) has previously served as judge or special judge in the case; except that whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment;
- (2) is disqualified by interest or relationship; or
- (3) is excused from service as special judge by the Indiana Supreme Court.

A special judge need not be a resident of the county where the case is pending, but accessibility should be considered in making the selection. Senior judges shall be eligible for service as special judge only in courts in which the senior judge is currently appointed by the Indiana Supreme Court to serve as senior judge.

**(K) Appointment by Indiana Supreme Court.** Upon the certification of a request for appointment of a special judge under Trial Rules 53.1, 53.2, 60.5 I.C. 34-13-5-4, as added by P.L. 1-1998, SEC. 8, governing public lawsuits, and this rule, the Supreme Court may appoint any person eligible for service under Section (j) or any member of the Bar of this state as special judge. The order of appointment of a special judge by the Indiana Supreme Court shall be entered in the Chronological Case Summary and Record of Judgments and Orders and served on all parties in the proceeding in accordance with Trial Rule 72(D) by the Clerk of the trial court. Such order vests jurisdiction in the special judge, and an oath shall only be required for members of the Bar appointed under this Section.

**(L) Continuation of Special Judge Jurisdiction.** A special judge shall retain jurisdiction of the case through judgment and post-judgment, including without limitation, proceedings to enforce the judgment or to modify or revoke orders pertaining to custody, visitation, support, maintenance and property dispositions and post-conviction relief unless:

- (1) a specific statute or rule provides to the contrary; or
- (2) the special judge is unavailable by reason of death, sickness, absence, or unwillingness to serve.

**(M) Transfer of Proceeding.** In the event the individual selected to serve as special judge in the case is a regular judge of a court within the county and such court has subject

matter jurisdiction of the proceeding, such judge may transfer the case without the assessment of costs to that judge's court for all further proceedings. In the event the individual selected is the regular judge of a court outside of the county where the case is pending and such court has subject matter jurisdiction in like cases, the parties and the judge may agree to a change of venue to such judge's court for all further proceedings. Assessment of statutory change of venue fees shall be shared by the parties as agreed or, failing agreement, as ordered by the court.

**(N) Place of Hearing.**

- (1) Absent the transfer of the case as set forth in Section (M), special judges are encouraged to employ procedures, such as the use of facsimile transmissions and telephone conferences that reduce the need for travel.
- (2) A special judge may entertain motions and perform all administrative tasks and conferences with counsel in his or her own county.
- (3) All hearings involving in-person testimony by witnesses shall be conducted in the court where the case is pending unless:
  - a. the parties and the judge agree otherwise on the record, or
  - b. the hearing is not before a jury and the special judge determines that exceptional circumstances exist such that the matter can only be heard in a timely fashion in his or her own county.
- (4) All decisions, orders, and rulings shall be ~~recorded~~ **entered** promptly **in the Chronological Case Summary** and, when appropriate, the Record of Judgments and Orders of the court where the case is pending and shall be served in accordance with Trial Rule 72(D). It is the duty of the special judge to effect the prompt execution of this rule. A court is deemed to have ruled at the time the ruling or decision is entered into a public record of or is received in the office of the clerk of the court where the case is pending.
- (5) It is the duty of the judge of the court where the case is pending to assure the availability of facilities and staff for the special judge.

**(O) Emergencies.** Nothing in this rule shall divest the original court and judge of jurisdiction to hear and determine emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction.

**(P) Compensation.** A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for service as a special judge. A senior judge shall be paid a special judge fee pursuant to Ind. Administrative Rule 5. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars (\$25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. Persons residing outside the county where service is rendered shall be entitled to mileage at a rate equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Compensation for special judge services shall be paid by the State upon presentation of a claim for such services.